

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of

STUDENT,

Petitioner,

v.

ABC UNIFIED SCHOOL DISTRICT and  
LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

Respondents.

OAH CASE NO. N 2006090198

**ORDER GRANTING DISMISSAL**

This matter is set for hearing on June 4 through June 8, 2007. On May 22, 2007, respondent Los Angeles Unified School District (LAUSD), through legal counsel, filed a motion for an order to show cause to dismiss the request of petitioner Student for a due process hearing in the above entitled matter. By OAH Order to Show Cause re District's Motion to Dismiss issued May 24, 2007, Student was ordered to respond to the motion, and to show cause in a telephonic conference at twelve o'clock noon on May 31, 2007, why the above captioned matter should not be dismissed for Student's failure to participate, prosecute or advance his request for a due process hearing. The Order to Show Cause was served on all parties on May 25, 2007.<sup>1</sup>

On May 31, 2007, the Order to Show Cause conference was held before Administrative Law Judge Deidre L. Johnson (ALJ) via a telephone conference initiated from OAH in Sacramento, California, beginning at 12:00 p.m. No one made an appearance by or on behalf of the petitioner Student. Attorney Donald A. Erwin represented respondent LAUSD. Attorney Cynthia Vargas, of Atkinson, Andelson, Loya, Ruud & Romo, represented respondent ABC Unified School District (ABCUSD). ALJ Johnson attempted to contact Student's mother (Parent) by calling Parent's telephone number of record with OAH. The ALJ was connected to a recording of music, no one answered the phone, there was no answering message, and there was no ability to leave a message. The conference was conducted without Parent's participation.

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<sup>1</sup> The order was served on Student's parent at her address of record in Los Angeles by overnight express mail, and at her post office box address in Artesia by U.S. Mail.

## APPLICABLE LAW AND DISCUSSION

No statute or regulation governs the dismissal of a special education due process hearing request due to failure of the petitioning party to participate in or prosecute his or her case. LAUSD contends that California Code of Civil Procedure section 583.410 provides guidance by analogy, in that it provides for discretionary dismissal of a court case if it is not prosecuted to trial or resolution within two years. While not applicable, it does show that one seeking a remedy in court should be diligent in prosecuting the action, or suffer the consequence of dismissal after passage of time.

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (See Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that Student or his representative participate in advancing the matter to hearing.

Student's request for a due process hearing was filed with OAH on September 5, 2006, and an amended request was filed on November 13, 2006. Each party to this proceeding was required by law to disclose their issues statement, and their witnesses and documentary exhibits to the other parties within requisite timelines. (Ed. Code § 56505, subd. (e)(6), (e)(7).) The Order Setting Mediation, Due Process Hearing and Telephonic Prehearing Conference of Presiding ALJ Karl Engeman, dated January 9, 2007 (the Order of January 9, 2007), gave Student notice of the hearing dates and ordered prehearing preparation to be completed by all parties. Student failed to obey the Order of January 9, 2007, by failing to file a Prehearing Conference Statement at least three business days prior to May 21, 2007, and thereafter by failing to participate in the Prehearing Conference (PHC) on May 21, 2007. Student failed to file witness and exhibit disclosure lists as required by the Order of January 9, 2007. Student failed to file a statement of the issues as required by that order.

Student was encouraged by the Order to Show Cause to participate in this conference, to offer excusable reasons for past nonparticipation, and to provide assurances that, if both school districts continue to expend time and money to prepare many witnesses and documents for hearing to commence next week, Parent or other representative of Student would appear on June 4, 2007, and present evidence in support of his request for relief. Because Student did not come forward and establish good cause for having failed to provide witness and exhibit disclosures to the school districts, Student's evidence, if any, is barred. (Ed. Code § 56505.1, subd. (f).) Student's failure to participate in this conference

establishes that Student does not intend to participate in or prosecute his case to hearing. The above captioned matter is hereby dismissed without prejudice, for failure of Student to participate in, prosecute or advance the matter without good cause. The hearing dates of June 4 through June 8, 2007, are hereby vacated.<sup>2</sup>

IT IS SO ORDERED.

DATED: May 31, 2007

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings  
Special Education Division

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<sup>2</sup> This order was rendered verbally on the record during the conference on May 30, 2007.